

QUESTION: “Consensus ad idem is germane to any contract which will be enforceable by law. Thus, 'one thing' is common to all these transactions and that is the existence of an agreement which will enable the enforcement of rights and obligations between the parties.”

Shonubi v Onafeko (2003) 12 NWLR pt. 1334, 254 at p.257.

Explain the above statement and support your answer with the aid of decided cases.

GROUP 6 ASSIGNMENT

LCI 201 (LAW OF CONTRACT 1)

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INTRODUCTION

Humans are majorly said to be dependent being, this implies that they can't necessarily exist on their own but need interaction with different persons and these interactions involve the exchange of resources of which contract exist. Contract as a concept can be viewed in various ways but in this context, we would be discussing contract in the legal sense.

In law, different legal scholars have defined the concept of contract in various methods, one of those definitions is the definition given by Galadinma J.C.A. in the case ***Kabo Air v. Tarfa***. Here, the honourable Judge views contract as "*an agreement which is legally binding on the parties to it and which, if broken, may be enforced by action in court against the defaulting party.*" In the same spirit of the law, Fabiyi J.C.A. in ***Oyewole v. Lawal*** defined contract in line with the Black Law Dictionary as "*an agreement between two or more persons which creates an obligation to do or not to do a particular thing*". It is essentially a promise or a set of promises for the breach of which the law provides a remedy, or the performance of which the law recognizes as a duty. For an agreement to be considered a valid contract, it must typically contain several key elements, including an offer, acceptance, consideration, an intention to create legal relations, and capacity to contract.

All of these buttress on the need of two major things. First being the agreement and second is binding ability. A contract is an agreement because it entails the decisions and promises of contracting parties which is well derived when both of their minds meet which is called *Consensus Ad Idem*. The presence of this *Consensus Ad Idem* guarantees the mutual agreement of both parties and this makes such an agreement a binding contract on both parties. *Consensus Ad Idem* is not about the parties' subjective, inner thoughts but rather their objective intentions as manifested by their words and conduct. A court will assess whether a reasonable person would conclude, from the parties' communications, that they had a common understanding of the agreement's terms. This principle ensures that parties are not bound by an agreement they did not genuinely intend to enter into and that there is a genuine basis for the rights and obligations that arise from the contract. Without this meeting of minds, we can infer to say that there was no agreement in such instance.

The *Principle of Consensus Ad Idem* was majorly pointed out in the case of ***Shonubi v. Onafekeo***, where the court found that the parties had different understandings of the agreement they entered into, which literally translate to the absence of no meeting of minds and therefore no

enforceable or binding contract. The honourable Judge held that "*Consensus ad idem is germane to any contract which will be enforceable by law. Thus, 'one thing' is common to all these transactions and that is the existence of an agreement which will enable the enforcement of rights and obligations between the parties.*"

The phrase, "...‘one thing’ is common to all these transactions and that is the existence of an agreement..." emphasizes that the existence of an agreement is the unifying element in all valid contractual dealings. No matter the type of transaction — whether it’s buying goods, hiring services, leasing property, etc. — there must be an agreement that reflects the intention of the parties to be legally bound by their promises. "...which will enable the enforcement of rights and obligations between the parties." This further highlights that once there is a clear agreement, the law will recognize it and allow each party to enforce their respective rights and obligations under that contract.

Consensus ad idem means that all the parties involved understand and agree to the same terms of a contract. If one party misunderstands a key part of the agreement, there is no consensus ad idem, and therefore, no binding contract. Consensus ad idem refers to the fundamental requirement in contract law that for a legally binding contract to be formed, all parties involved must have a clear, mutual understanding and agreement on the essential terms and subject matter of the agreement. It means that both parties are not just agreeing, but they are agreeing to the same thing in the same sense.

The Supreme Court of Nigeria in ***Best (Nigeria) Ltd. v. Blackwood Hodge (Nigeria) Ltd*** had held that "*Consensus ad idem is the very foundation of any binding contract. It means that the parties to a contract must be in agreement as to the terms and subject matter of the contract.*" The Supreme Court of Nigeria also in ***U.B.N. v. Ozigi*** had defined consensus ad idem also to mean: "*There must be a meeting of the minds, that is, consensus ad idem, before a contract can be said to exist between parties.*"

CONCENSUS AD IDEM IN THE FORMATION OF A CONTRACT AND HOW LACK OF IT MIGHT LEAD TO VOID/NON ENFORCEABLE CONTRACT

Consensus ad idem is mostly reflected in the acceptance of an offer without any changes being made in the initial offer. This phrase of Consensus ad idem originated from the fact that contracts are rendered void if the parties are not on the same tangent when it comes to terms and conditions that constitute a contract. For a contract to be valid, the parties must intend to enter into a legally binding agreement. Consensus ad idem ensures that all parties shares the same understanding and intent. If there is ambiguity or misunderstanding about the terms (e.g., the identity of the goods or services), it may mean consensus ad idem was not achieved, rendering the contract void or voidable. All kinds of perplexities shall be avoided in the terms of the contract and shall not be subject to any ambiguity.

Meeting of minds is therefore very necessary. It does not completely eradicate the possibility of difference in opinion but simply means that all the different opinions shall be clearly discussed and accommodated in a manner that does not overlook the interests of all parties to a contract. It focuses on the removal of any sort of confusion that may, later on, lead to conflicts. Hence, mutual agreement is essential to keep away any conflicting situation that may arise from a misunderstanding when the contract was formulated. For example, if A agrees to sell a "Jaguar" to B, but A means the animal while B believes it's a car; there is no consensus ad idem, and thus, no valid contract.

In *Union Bank of Nigeria Ltd v. Ajabule*, the Supreme Court held that meeting of the minds is a fundamental prerequisite for the formation of any valid contract. Even if documents are signed, there is no contract unless there is mutual consent.

Without consensus ad idem, there is no real agreement to enforce. Courts often use this principle to determine whether a true contract exists or whether the parties were simply negotiating or misunderstanding each other.

Lack of *consensus ad idem* causes contracts to be void *ab initio* (from the beginning), or unenforceable, since no true agreement existed.

In the case of *Raffles v. Wichelhaus*, there was ambiguity about an essential term which invalidated the contract. There was no *consensus ad idem* because both parties had different ships in mind.

JUDICIAL INTERPRETATION AND DECIDED CASES

The case of *Shonubi v. Onafeko* serves as an instructive example of the judiciary's approach to this doctrine. The facts revealed that the appellant alleged the existence of a binding agreement with the respondent regarding the sale of land. However, discrepancies in the understanding and intentions of both parties led the court to conclude that there was no true meeting of minds. The Court held that mere negotiations or subjective beliefs do not establish a valid contract in law; what is required is clear, objective mutual assent. The decision reaffirms the position that the courts will only enforce obligations that arise from a definite and mutual agreement.

The requirement of consensus ad idem is not unique to Nigerian jurisprudence but is a well-established principle in common law jurisdictions. A prominent illustration can be found in the classic English case of *Carlill v Carbolic Smoke Ball Co. (1893) 1 QB 256*. In that case, the court enforced a contract formed by the company's public advertisement and Mrs. Carlill's compliance with its terms. The court found that a valid offer had been made and accepted, demonstrating both intention and mutual agreement. This case illustrates that where the parties' intentions and understanding coincide, a valid contract is formed, irrespective of its formality.

Similarly, in *Balogun v. University of Abuja (2002) 13 NWLR (Pt. 783) 379*, the Nigerian Court of Appeal was faced with a claim based on an alleged contractual relationship between a student and the university. The university had offered admission, which was later withdrawn. The plaintiff argued that this withdrawal amounted to a breach of contract. However, the court found that no enforceable contract existed because the terms of admission had not crystallized into binding obligations. The judgment affirmed that without mutuality of understanding and intention, contractual liability cannot arise.

The importance of clarity and mutual assent was also central to the case of *Harvela Investments Ltd v. Royal Trust Co. of Canada (1986) AC 207*. In that case, the House of Lords dealt with competing bids for the purchase of shares. One party submitted a referential bid, which created ambiguity regarding the acceptance of the offer. The court held that such ambiguity undermined the certainty required for consensus and therefore invalidated the agreement. This decision reinforces the point that the mutual understanding required for contractual agreement must be precise and unequivocal.

In *R v. Clarke (1927) 40 CLR 227*, the High Court of Australia dealt with a situation where the claimant gave information to the authorities but had not, at the time, intended to accept

a reward offer. The court ruled that since the claimant was not acting in reliance on the offer when he provided the information, there was no true acceptance. This case highlights that a valid contract demands not only an offer and acceptance, but also the intention to be bound by the agreement at the relevant time. This further supports the idea that consensus requires both subjective and objective alignment between the parties.

Another illustrative Nigerian case is *Odutola v. Papersack Nigeria Ltd (2006) 18 NWLR (Pt. 1012) 470*, where the Supreme Court found that a valid lease agreement existed between the parties. The evidence showed that both parties had reached a clear agreement on the terms and had acted upon them. The court upheld the enforceability of the contract, emphasizing that mutual assent, coupled with performance or reliance, creates a binding obligation under the law. The decision aligns with the enduring requirement that enforceability hinges on the existence of consensus ad idem.

Taken together, these cases demonstrate that consensus ad idem is more than a theoretical abstraction — it is a practical requirement that lies at the heart of contractual relationships. It ensures that obligations are not imposed unilaterally or based on vague understandings, but on shared, intentional commitments. The Nigerian courts, like their common law counterparts, have consistently insisted that unless both parties are clearly and objectively in agreement, no contract can be deemed valid or enforceable.

IMPORTANCE OF CONSENSUS AD IDEM IN ENFORCING RIGHTS AND DUTIES

Consensus ad idem also known as meeting of minds is a fundamental principle in law of contract that ensures all parties involved in an agreement understand and agree to the same terms and conditions. If there is no mutual agreement between parties, then there is no valid contract.

Consensus ad idem is essential because a contract is only valid if the parties reach a mutual agreement on the terms. Without consensus ad idem, there can be no legally binding contract, making it possible to enforce rights or obligations.

Also, when all parties have a clear understanding of their responsibilities, disputes are minimized. This makes sure that duties are performed as intended and rights are respected.

In addition, the rights and duties of each party are defined by the terms agreed upon. If there is no consensus, it is challenging for courts to enforce any rights or obligations since the actual agreement remains unclear.

Furthermore, consensus ad idem protects against coercion or misrepresentation by ensuring that the agreement was entered into willingly and with full understanding.

THE EFFECT OF AMBIGUITY, MISTAKE OR MISREPRESENTATION ON CONSENSUS IN CONTRACT LAW

In the Nigerian law of contract, the principle of consensus ad idem meaning a true meeting of the minds is fundamental to the validity of any agreement. As emphasized by Sagay in his authoritative work Nigerian Law of Contract, any factor that distorts or impairs the free and informed consent of parties undermines the foundation of a contract. Among the most common threats to consensus are ambiguity, mistake, and misrepresentation. Each introduces an element of misunderstanding or deception that can render a contract void or voidable, depending on its nature and severity.

1. Ambiguity and Its Impact on Consensus

Ambiguity occurs when the language of a contract is vague or susceptible to multiple interpretations, making it difficult to ascertain the true intentions of the parties. According to Sagay, for a contract to be valid, its terms must be clear, certain, and mutually understood. When ambiguity affects key elements such as the subject matter, consideration, or obligations of the parties, it casts doubt on whether there was ever a genuine agreement. Courts generally strive to interpret contracts in a manner that preserves their validity. However, where the ambiguity is so fundamental that it obscures the purpose or terms of the agreement, the court may declare the contract void for uncertainty. In such cases, the lack of clarity directly undermines the existence of consensus ad idem.

2. Mistake and Its Effect on Consensus

A mistake in contract law refers to a misunderstanding or incorrect belief held by one or both parties at the time the agreement was formed. Sagay categorizes mistakes into three types: common, mutual, and unilateral each with distinct implications for consensus.

A common mistake arises when both parties are mistaken about the same essential fact. For instance, if both parties enter into a contract for the sale of goods that have unknowingly perished, the contract is void, as there is no real agreement on an existing subject matter.

A mutual mistake occurs when the parties misunderstand each other's intentions, resulting in a situation where each party believes they are agreeing to something different. Such a misunderstanding may nullify consensus if it affects a material term of the contract. A unilateral mistake, where only one party is mistaken, typically does not void a contract unless the other party knew of the mistake and sought to exploit it. In such cases, equity may intervene to prevent unjust outcomes.

Sagay asserts that the critical test for determining whether a mistake undermines consensus is whether the mistake defeats the intention of the parties to enter into the same contract on the same terms.

3. Misrepresentation and Its Effect on Consensus

Misrepresentation involves a false statement of fact made by one party that induces another to enter into a contract. Sagay identifies three types of misrepresentation: fraudulent, negligent, and innocent. Regardless of its form, misrepresentation distorts the informed consent of the misled party, thereby affecting the validity of the contract.

When a contract is based on misrepresentation, the apparent consensus is flawed because one party's decision was influenced by false information. While misrepresentation may not render a contract void, it typically makes it voidable at the instance of the party who was misled. This means the injured party has the right to rescind the contract and, in certain cases, claim damages especially where the misrepresentation was fraudulent or negligent.

Sagay emphasizes that true consent cannot exist where deception or false belief forms the basis of a party's agreement.

In summary, ambiguity, mistake, and misrepresentation are significant factors that undermine the essential requirement of consensus in contract law. As Sagay articulates, consensus ad idem is not just about apparent agreement but about a genuine, informed, and voluntary meeting of the minds. When this consensus is compromised whether by unclear terms, mutual misunderstanding, or deceptive statements the validity of the contract is at risk. By addressing these issues carefully during contract formation, parties can ensure that their agreements are not only enforceable but also grounded in true and mutual understanding.

HOW THE ABOVE MENTIONED AFFECT THE PRINCIPLES OF CERTAINTY, FAIRNESS AND JUSTICE IN CONTRACTUAL OBLIGATION

The validity and enforceability of any contract rest on three core legal principles: justice, fairness, and certainty. These principles not only safeguard the rights of contracting parties but also preserve the integrity of the legal system. According to Sagay in Nigerian Law of Contract, when elements such as ambiguity, mistake, or misrepresentation are present, they threaten these foundational values and may render a contract void or voidable.

1. Certainty

Certainty requires that the terms of a contract be clear, precise, and understandable. Contracts must reflect a mutual and definite agreement to ensure that obligations are enforceable and expectations are aligned.

Ambiguity directly undermines certainty. When the language of a contract is vague or open to multiple interpretations, it becomes difficult to establish whether the parties were ever truly in agreement. Sagay notes that a contract lacking clear terms may be void for uncertainty, as courts cannot enforce obligations they cannot confidently interpret.

Similarly, a mistake particularly where it is mutual or common suggests that the parties were never on the same page regarding essential terms. Such misunderstandings erode the clarity required for contractual certainty and may nullify the agreement altogether.

2. Fairness

The principle of fairness ensures that all parties enter a contract voluntarily, with full knowledge of the material facts, and without deception or undue influence. Fairness demands that contracts be based on truth and mutual benefit.

Misrepresentation strikes at the heart of fairness. Whether fraudulent, negligent, or innocent, it distorts the reality upon which a party consents to a contract. Sagay emphasizes that where consent is obtained through misrepresentation, the resulting agreement is voidable because it lacks true voluntariness and equity.

The law intervenes to uphold fairness by providing remedies such as rescission or damages, enabling the injured party to escape the unfair consequences of being misled.

3. Justice

Justice in contract law refers to the equitable treatment of parties and the enforcement of agreements in accordance with the true intentions of those involved. It also implies that no party should unjustly benefit at the expense of another.

Enforcing a contract tainted by mistake, ambiguity, or misrepresentation can lead to unjust outcomes. For instance, compelling a party to perform a contract based on a fundamental misunderstanding or false representation would be contrary to the dictates of justice.

In cases of ambiguity, justice may require that unclear terms be interpreted against the party who introduced or benefited from the vagueness—a principle known as the *contra proferentem* rule.

In summary, the presence of ambiguity, mistake, or misrepresentation significantly compromises the core principles of certainty, fairness, and justice that underpin valid contractual relationships. As Sagay rightly observes, the law does not enforce agreements for their own sake but insists that they be rooted in genuine, informed, and voluntary consensus. Upholding these principles ensures that contractual obligations are not only legally binding but also morally and socially acceptable.

In conclusion, *consensus ad idem* is the cornerstone of every valid and enforceable contract. It represents the mutual understanding and agreement between parties on the essential terms of their arrangement. Without this meeting of minds, there is no true agreement—only assumptions, misunderstandings, or mere negotiations that cannot give rise to legal obligations.

The Nigerian courts, supported by common law principles, have consistently upheld this doctrine as fundamental to the integrity of contractual relationships. Through cases like *Shonubi v. Onafeko*, *UBN v. Ozigi*, and *Raffles v. Wichelhaus*, it is clear that where consensus is absent, a contract either does not exist or is void ab initio.

To encapsulate its importance: *consensus ad idem* is to contract law what a foundation is to a building—without it, the entire structure collapses. It is the legal assurance that the rights and duties being enforced are rooted in a clear, mutual, and deliberate understanding.

Thus, the principle is not merely procedural but central to the values of **certainty**, **fairness**, and **justice**, ensuring that contractual obligations are not only binding, but equitable and legitimate.

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